

News Release



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U.S. Labor Department Sues 401(k) Trustee of Defunct Alabama Company Over Delinquent Employee Contributions

BIRMINGHAM, Ala.--The U.S. Department of Labor has sued the trustee of the 401(k) plan of defunct Southeast Microserv Inc. in Birmingham, Ala., for failure to forward \$9,799.87 in employee contributions and to timely forward contributions deducted from employees' paychecks to the plan.

"Trustees of a 401(k) plan have a responsibility to ensure that the assets of the plan are used solely to benefit participants," said Howard Marsh, director of the department's Atlanta regional office of the Employee Benefits Security Administration (EBSA). "One of the most important responsibilities is putting money from workers' wages into their 401(k) accounts on time."

The department's lawsuit alleges that Andrew Wright failed to forward employee contributions to the plan's account between July 5, 2001 and Nov. 30, 2001 and to timely remit contributions to the 401(k) from Jan. 31, 2001 to July 5, 2001. The suit alleges that Wright and the company violated the Employee Retirement Income Security Act (ERISA) by failing to tell participants about the delinquent contributions, using the contributions for purposes other than to benefit participants and failing to obtain a fidelity bond. Wright also allegedly failed to monitor or correct the improper actions of Southeast Microserv, the administrator of the 401(k) plan.

As relief, the suit seeks to require that Wright restore all losses with interest and appoint a successor fiduciary or administrator to distribute the assets to participants. The department also asks the court to permanently bar Wright from service to any ERISA-covered plan in the future. The case, investigated by EBSA's Atlanta regional office, was filed in federal district court in Birmingham.

Southeast Microserv ceased operations in December 2001. The company sponsored the plan for at least 10 participants until the plan was discontinued on March 18, 2002, when its remaining assets were distributed to participants.

Employers with similar problems who are not yet the subject of an investigation by EBSA may be eligible to participate in the department's Voluntary Fiduciary Correction Program (VFCP). Participation in the VFCP requires employers to make workers whole but allows them to avoid EBSA enforcement actions and civil penalties as well as any applicable excise taxes. For more information about the VFCP, see www.dol.gov/ebsa.

In fiscal year 2003, EBSA achieved record monetary results of \$1.4 billion related to the pension, 401(k), health and other benefits of millions of American workers and their families. Employers and workers can reach EBSA's Atlanta regional office at (404) 562-2156, for help with problems relating to private-sector retirement and health plans.

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(Chao v. Wright) Civil Action No. 04-CV-2801

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